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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,376	04/25/2000	Angelika Bormann	Beiersdorf 613	7840

7590

05/27/2003

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 05/27/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/557,376

Applicant(s)

BORMANN ET AL.

Examin r

Lauren Q Wells

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) 13,15 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12,14,16-18 and 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 10-29 are pending. Claims 13, 15 and 19 are withdrawn from consideration, as they are directed to non-elected subject matter. The Amendment filed 3/3/03, Paper No. 18, added claims 28-29.

Applicant's arguments with respect to claims 10-12, 14-18, 20-27 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

The Election/Restriction Requirement of Paper No. 6, mailed 6/4/01 is maintained. In Paper No. 7, received 10/9/02, Applicant elected lactic acid as the hydroxy acid and polyglyceryl (3) methylglucose distearate as interface substance A and B. The Examiner expanded the search of hydroxy acids to include citric and tartaric acid.

Applicant's elected species was searched. The search was not extended because prior art was found to render the species obvious.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/3/03 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-12, 14, 16-18, 20-24, 27-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Bimczok et al. (5,961,999).

Bimczok et al. teach a method of skin care comprising applying to the skin a composition in an amount sufficient to moisturize the skin, cause the reduction of skin wrinkling, and smooth the skin. Exemplified is a composition in the form of an emulsion comprising 3g polyglyceryl-3-methylglucose distearate (substance A), 3g glyceryl stearate (substance B), and 0.5g citric acid. See Col. 1, line 10-Col. 8, line 65. Thus, Bimczok et al. and the instant invention both teach a method of treating blemished skin comprising applying to the skin a composition in the form of an emulsion comprising 3g polyglyceryl-3-methylglucose distearate, 3g glyceryl stearate, and 0.5g citric acid.

It is respectfully pointed out that Bimczok et al. teach their composition for application to wrinkles, and wrinkles are blemishes, wherein blemishes are defined as imperfections that mar or impair; a flaw or defect¹, as defined by Webster's Dictionary.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

¹ The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bimczok et al. as applied to claims 10-12, 14, 16-18, 20-24, 27-28 above.

The instant invention is directed toward a method of treating blemished or acned skin comprising topically applying to such skin a composition in the form of an emulsion comprising an alpha-hydroxy or beta-hydroxy acid, an interface-active substance A which is a glucose derivative, and optionally an interface-active substance B.

Bimczok et al. is applied as discussed above. The reference further teaches citric acid, lactic acid, and tartaric acid as interchangeable alpha-hydroxy acids. The reference does not exemplify a composition comprising lactic acid or tartaric acid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute lactic acid or tartaric acid for the citric acid exemplified in Example 1 of Bimczok et al. because of the expectation of achieving similar hydration effects.

Claims 10-12, 14, 16-18, 20-24, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Traupe et al. (5,759,584) in view of Zocchi (5,683,972).

Traupe et al. teach a method for treating skin afflicted with blemishes or acne with a composition comprising distilled wool wax acids and at least one monoglycerol monocarboxyl acid monoester of substance B of the instant invention, wherein the monoester comprises 0.1-10% of the composition. Emulsions are taught as composition forms. Alpha-hydroxy acids are disclosed as the main constituents of wool wax acids. The reference does not teach interface-active substances A. See Col. 1, line 45-Col. 8, line 60.

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Zocchi teaches cosmetic emulsions. Polyglyceryl methylglucose distearate is taught as an emulsification system and imparts physical stabilization to emulsions, such as maintaining the emulsion's viscosity profile, maintaining the visual assessment of homogeneity, and achieving a proper balance between the liophilicity and hydrophilicity of the composition. The polyglyceryl is taught as comprising 1-10% of the composition. See Col. 3, lines 1-63.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the polyglyceryl methylglucose distearate taught by Zocchi to the composition of Traupe et al. because of the expectation of achieving cosmetic emulsions with improved stability, and maintenance of viscosity profile, maintenance of visual assessment of homogeneity and balance of lipophilicity and hydrophilicity.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

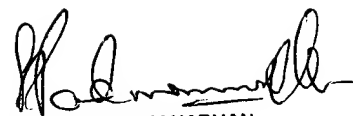
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lqw

April 4, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

4/7/03